

**IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

**Latasha Holloway, *et al.*,**

**Plaintiffs,**

**v.**

**City of Virginia Beach, *et al.*,**

**Defendants**

**Civil Action No. 2:18-cv-0069**

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**MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO EXCLUDE  
PLAINTIFFS' SUPPLEMENTAL EXPERT REPORTS AND OPINIONS**

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**PLAINTIFFS' EXHIBIT 5**

Supplemental Deposition of Plaintiffs' Expert Dr. Doug Spencer

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

-----  
LATASHA HOLLOWAY and GEORGIA ALLEN,

Plaintiffs,

CIVIL ACTION NO.  
2:18-cv-00069

v.

CITY OF VIRGINIA BEACH, et al.,

Defendants.  
-----

DEPOSITION UPON ORAL EXAMINATION  
OF DOUGLAS M. SPENCER,  
TAKEN ON BEHALF OF THE DEFENDANTS

Lafayette, Colorado

June 9, 2020

VOLUME II

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Kate Hamilton

## I N D E X

DEPONENT	EXAMINATION BY	PAGE
Douglas M. Spencer	Mr. Boynton	6

## EXHIBITS

NO.	DESCRIPTION	PAGE
11	Expert Report of Anthony Fairfax	6
12	Expert Report of Anthony E. Fairfax, Response to Peter Morrison's Report	6
13	Supplemental Expert Report of Anthony E. Fairfax	6
14	United States Census 2010	6
15	United States Census 2020	6

1 Deposition upon oral examination of  
2 DOUGLAS M. SPENCER, via teleconference, taken on  
3 behalf of the Defendants, before Kathleen Beard  
4 Adams, CCR, RPR, CRR, an e-Notary Public for the  
5 Commonwealth of Virginia at large, commencing at  
6 9:13 a.m. MDT, on June 9, 2020, at 720 Barberry  
7 Circle, Lafayette, Colorado, and this in accordance  
8 with the Federal Rules of Civil Procedure.

9 - - - - -

10 (Spencer Exhibits 11 through 15 were  
11 pre-marked for identification.)

12 (The deponent was sworn.)

13 MR. BOYNTON: Thank you, Ms. Adams.

14  
15 DOUGLAS M. SPENCER, having been first  
16 duly sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BOYNTON:

19 Q. Dr. Spencer, good morning. How are you  
20 today?

21 MS. GREENWOOD: Just a --

22 A. I'm --

23 MS. GREENWOOD: -- moment, Mr. Boynton.  
24 I'm sorry. I just wanted to put on the record first  
25 that we've agreed to extend the deposition of

1 Dr. Spencer today to cover additional issues he  
2 raised in the supplemental report from March 2020,  
3 but this isn't an opportunity for counsel to re-ask  
4 questions about the first two reports or engage in  
5 new lines of questioning about those reports.

6 Thank you. Please go ahead.

7 BY MR. BOYNTON:

8 Q. Dr. Spencer, I think I was asking you  
9 how -- how your morning is.

10 A. My morning is great. Thank you.

11 Q. That's very good to hear. It's good to  
12 see you again, sir. My name is Chris Boynton, as  
13 you know, and I represent the defendants in this  
14 case along with my colleagues who are on this video  
15 deposition, including Jerry Harris, Joe Kurt and  
16 Kate McKnight.

17 MR. BOYNTON: First things first. This  
18 is a remote deposition, and my understanding is that  
19 the parties have waived any objections that would --  
20 that would arise under the -- the nature of taking a  
21 deposition remotely; i.e., in the absence of the  
22 court reporter being with you. Correct?

23 MS. GREENWOOD: That's correct.

24 BY MR. BOYNTON:

25 Q. Okay. Now, especially since we're doing



1     this over Zoom it's going to be particularly  
2     important that each of us complete our -- our  
3     question or answer and not talk over each other.  
4     Beyond that the usual deposition rules apply, which  
5     are if I've asked a question that is re -- I'm sorry  
6     -- is -- is in any way confusing or not clear, just  
7     speak up and I'll be happy to rephrase. Also, if  
8     you have given an answer that at some point occurs  
9     to you is inaccurate or incomplete, please speak up  
10    and we'll correct the record and move forward.

11                 Please -- please be mindful of not  
12    responding with nods or gestures but only with  
13    words. The court reporter is not able to take down  
14    anything but verbal statements.

15                 Does that all work for you, sir?

16                 A.     That makes sense to me. Yes.

17                 Q.     Very good. Now, we last spoke I believe  
18    on October 1st, 2020; is that -- or 2019; is that  
19    correct?

20                 A.     I believe so. Yes.

21                 Q.     And in -- in the deposition we covered  
22    your current curriculum vitae at the time, correct?

23                 A.     Correct.

24                 Q.     If I direct -- and -- and what I've  
25    done -- let's start with this in terms of

1 definitionally. You have given now three reports in  
2 this case, correct?

3 A. That is correct.

4 Q. So can we refer to them as the initial  
5 report, the rebuttal report and the supplemental  
6 report in sequence?

7 A. That would be clear for me.

8 Q. Okay. And -- and just for the record,  
9 the -- and you can tell me if I'm being inaccurate.  
10 I've pre-marked and pre-circulated exhibits to the  
11 -- the witness and to his counsel -- or through his  
12 counsel.

13 Your initial report is Spencer Exhibit  
14 1. We have the same numbers for the first nine  
15 exhibits as your October 1st deposition. So when I  
16 say original or -- or initial report I'm referring  
17 to Spencer 1, correct?

18 A. Correct.

19 Q. Okay. And when I refer to rebuttal  
20 report I'm referring to Spencer 2, which was dated  
21 August 26th, 2019, correct?

22 A. That's correct.

23 Q. Okay. And then the supplemental report,  
24 which is the focus of our deposition testimony here  
25 today, is dated March 16th, 2020, Exhibit 10 to

1 today's deposition?

2 A. That is my understanding. Yes. That's  
3 -- that accords with what I see as well.

4 Q. Okay. And I don't know how deeply we'll  
5 get into them --

6 A. I don't hear you right now, Mr. Boynton.

7 Q. Okay. Can you hear me now?

8 A. Yes.

9 Q. Okay. I don't know how deeply we will  
10 get into them, but your -- your fellow expert on  
11 behalf of the plaintiffs, Anthony Fairfax, has also  
12 issued three reports in this case, correct?

13 MS. GREENWOOD: Objection.

14 A. I -- I --

15 BY MR. BOYNTON:

16 Q. Go ahead.

17 A. I know he's issued multiple reports. If  
18 -- if you counted three, that sounds right.

19 Q. Well, and I'm just really trying to  
20 establish nomenclature at this point. I -- I intend  
21 to refer to his reports as the initial report, which  
22 I believe is provided at Exhibit 11 --

23 A. (Moved head up and down.)

24 Q. -- and dated July 15th, 2019. I will  
25 refer to his rebuttal report, which is Exhibit 12,

1     dated August 26th, 2019, correct? And the third,  
2     his supplemental expert report dated March 16th,  
3     2020, is Deposition Exhibit 13. So hopefully that  
4     just establishes the nomenclature. And the -- the  
5     six reports were made after reference by virtue of  
6     the -- the -- the focus of today's work, which is  
7     your supplemental expert report, which is Exhibit  
8     10.

9             A.     (Moved head up and down.)

10            Q.     Bear with me for just a second.

11                   All right. Now, referring to the  
12     credentials that you identified as your CV, starting  
13     at page 42 in your initial report, which is Exhibit  
14     1, has anything changed or been updated in regard to  
15     your curriculum vitae since October 1st, 2019?

16            A.     Yes. There are a few changes that  
17     aren't reflected in that copy of the curriculum  
18     vitae. The first is that I was a visiting professor  
19     at the Yale Law School during the spring 2020  
20     semester. The second is that I beginning July 1st,  
21     but I'm here now, will be a visiting professor at  
22     the University of Colorado law school.

23            Q.     Okay. So other than the two visiting  
24     professorships is there any change to your -- your  
25     CV?

1           A.     If you'll -- i -- I think there are one  
2     or two additional publications that have hit since  
3     that time, and I'm -- I'd need to look to remind  
4     myself. If that's relevant, I'm happy to provide  
5     that.

6           Q.     Okay. That would be most appreciated.  
7                 Can you, sitting here today, recall the  
8     topics of the new publications?

9           A.     Yes. One of them was about the campaign  
10    mobilization activities with regards to poor voters  
11    and voters of color. One of them is a paper about  
12    campaign finance disclosure.

13          Q.     Okay. Any other changes to your CV  
14    beyond a couple of papers and a couple of visiting  
15    professorships?

16          A.     No. None that are relevant.

17          Q.     Have you been disclosed or retained to  
18    testify in any Voting Rights Act cases since October  
19    1, 2019 that was not previously disclosed?

20                 MR. BOYNTON: I can't hear you. You're  
21    muted. You're muted, Ruth.

22                 MS. GREENWOOD: Yes. I apologize. Just  
23    objection to the extent that if he is not able to  
24    disclose, then that would be privileged information.  
25    If he's going --

1 MR. BOYNTON: I'm happy to limit the  
2 question to -- to matters that are public at this  
3 point.

4 MS. GREENWOOD: Thank you.

5 A. The -- the answer is no.

6 BY MR. BOYNTON:

7 Q. Okay. Has your basis of compensation in  
8 this case changed since we discussed it in October  
9 of 2019?

10 A. It has not.

11 Q. What is the basis of your compensation?

12 A. \$250 per hour.

13 Q. Does that change when giving testimony  
14 in deposition or at trial?

15 A. No, it does not.

16 Q. Okay.

17 A. I believe the scope of my agreement is  
18 for written reports and depositions, but the rate is  
19 uniform for all activities performed.

20 Q. Understood. Thank you.

21 Similarly I'd ask you to look at  
22 previously marked Exhibit 4. It's a one-page  
23 exhibit. It's your UConn School of Law profile  
24 page. It was previously used in the first  
25 deposition. It's Exhibit 4.

1 A. Give me one moment, please.

2 Q. Certainly.

3 A. I'm scrolling down.

4 Q. It's after your two long reports, which  
5 is somewhere deep in the first, you know, set of  
6 exhibits.

7 A. There we go. Okay. I see this exhibit.

8 Q. Take a moment to look at it. I know the  
9 print is pretty small.

10 A. Okay.

11 Q. Do you recall if that profile has been  
12 updated since October of 2019?

13 A. I don't recall. I don't have control  
14 over the content of this page, but it looks  
15 substantively up to date.

16 Q. Okay. Fair enough. Thank you.

17 Has the scope of your work changed since  
18 we talked in October of 2019?

19 A. No.

20 Q. Okay. So I'd ask you to look at Exhibit  
21 10, which is your supplemental expert report.

22 A. Do you have a question?

23 Q. That is the correct document? I'm not  
24 hearing --

25 A. Okay.

1 Q. -- you, though, which is --

2 A. Can you hear me speaking now?

3 Q. Yes.

4 A. Okay. I've printed out a copy. I'd  
5 like to use a hard copy. If that's not acceptable,  
6 I'm happy to scroll through the attachment that you  
7 sent. I just want to check with you.

8 Q. You're welcome to use your own copy of  
9 it. I have no problem with that.

10 A. Thank you.

11 Q. Okay. I'd ask you to turn to page 2.

12 A. Okay.

13 Q. Okay. So I'm -- I'm looking at the  
14 second paragraph at the summary. It says, "As  
15 an..." --

16 A. Yes.

17 Q. "As an update to my earlier reports, I  
18 analyzed the performance of three modified  
19 illustrative plans for Virginia Beach City Council  
20 elections produced by Plaintiffs' expert Dr. Anthony  
21 Fairfax in his supplemental expert report."

22 Do you see that?

23 A. I do.

24 Q. Okay. And so those are the Modified  
25 Illustrative Plan, the Modified Alternative Plan 1



1 and the Modified Alternative Plan 2, correct?

2 A. That's correct.

3 Q. All three of those maps you did not have  
4 prior to your deposition in -- on October 1st, 2019?

5 A. That is correct.

6 Q. Okay. In terms of the scope of this  
7 supplemental expert report you did not have to do an  
8 anal -- analysis of the performance of any other  
9 modified illustrative or alternative plans in  
10 Mr. Fairfax's supplemental report, which is Exhibit  
11 13 and dated March 16th, 2020, correct?

12 A. The only analysis that I provided was  
13 the three plans that are in this supplemental report  
14 that I provided to you. I don't know what else was  
15 provided in Mr. Fairfax's report.

16 Q. What -- what -- have you reviewed  
17 Mr. Fairfax's entire supplemental report?

18 A. I have reviewed it, yes.

19 Q. What prompted you to do a performance  
20 analysis for only the illustrative plan and the two  
21 -- the first two alternative plans and not any other  
22 plans in that report?

23 A. These were the three plans that I was  
24 asked to analyze.

25 Q. So you -- to say it another way, you

1 were not asked to analyze any other plans in  
2 Fairfax's supplemental report?

3 A. That is correct.

4 Q. Well, and -- and I'm taking this that  
5 you did not also analyze the performance of any  
6 illustrative or alternative districts in Fairfax's  
7 rebuttal report. Correct?

8 MS. GREENWOOD: Objection to the extent  
9 that it calls for drafts, but you may answer.

10 A. I -- I think that's correct. The -- the  
11 -- the plans that I evaluated were an illustrative  
12 plan that was in my original report, and these three  
13 plans that -- and all of these plans were provided  
14 to me by counsel. So I'm not exactly sure in which  
15 report they were provided by Mr. Fairfax.

16 BY MR. BOYNTON:

17 Q. Okay. That's fair enough, but, sitting  
18 here today, if you looked at your own rebuttal  
19 report, and feel free to do so -- it's -- it's your  
20 Exhibit 2 -- there does not appear to be any  
21 analysis of performance of any illustrative or  
22 alternative districts, correct?

23 A. That is correct, yes.

24 Q. And the scope of the supplemental expert  
25 report does not include any analysis of prior

1 illustrative or alternative plans, correct?

2 A. It includes just the three plans that  
3 counsel asked me to analyze. Correct.

4 Q. Understood. Thank you, sir.

5 So these -- in your summaries you -- the  
6 second thing you're doing beyond analyzing the  
7 performance of three modified districts or plans --  
8 I'm sorry -- six districts, three plans, you -- you  
9 also confirm certain findings of your original  
10 report by providing additional supporting  
11 information, correct?

12 A. That is correct.

13 Q. That relates solely to the 2010 election  
14 between George Furman and Louis Jones; is that  
15 correct?

16 A. That is correct, yes.

17 Q. Okay. So moving to what you say in the  
18 analysis of modified plans, still on page 2, you  
19 say, "In this section I analyze the potential  
20 cohesion in, and ameliorative effect of, three sets  
21 of possible majority-minority districts in Virginia  
22 Beach," correct?

23 A. That's what I wrote, correct.

24 Q. Where is the potential cohesion analysis  
25 in the supplemental report?

1           A.       So in the three -- excuse me. In the  
2 two tables that are provided on pages 4 and 5 I  
3 report the estimated support for these candidates in  
4 the new districts which are a majority minority.

5           Q.       And that is an all-minorities analysis,  
6 correct?

7           A.       That is correct, yes.

8           Q.       Is there anywhere in this supplemental  
9 report that you show the breakdown between or among  
10 different minority groups?

11          A.       No, there is not.

12          Q.       Why is that?

13          A.       Well, as an extension of a conversation  
14 we've had previously, the relevant comparison for  
15 determining whether or not these districts perform  
16 is to compare the vote totals of white voters and  
17 non-white voters, minority voters, in these  
18 districts.

19          Q.       How does that analyze cohesion?

20          A.       Well, if as a pattern and as a group  
21 black/Hispanic/Asian voters are preferring a  
22 particular candidate and that candidate is losing  
23 due to white bloc voting, then that rises to the  
24 level of racially polarized voting under the  
25 Gingles.

1           Q.     Am -- am I accurate, returning briefly  
2     to the three plans that -- for performance analysis,  
3     you are capable of reviewing other plans, you were  
4     just simply not asked to?

5           A.     That's correct.

6           Q.     So tell me the process that went into  
7     your analysis of the modified plans. I assume the  
8     process was the same, but there were three plans and  
9     two districts in each plan, correct?

10           MS. GREENWOOD: Objection, just to the  
11     extent that that's a series of questions.

12           A.     Just -- I missed some of that question.

13     BY MR. BOYNTON:

14           Q.     That's fine. I can --

15           A.     Sorry, Mr. Boynton.

16           Q.     Sorry.

17           A.     I missed some of that question.

18           Q.     Sure. And it was objectionable anyway,  
19     so let me start over.

20           A.     Okay.

21           Q.     You -- when you performed your analysis  
22     of modified plans you used one process to review  
23     three plans, correct?

24           A.     Can you clarify what you mean by  
25     process? Sorry.

1 Q. That's what I'm trying to ask you. What  
2 was your process in analyzing these modified plans?

3 A. I used a geographic information systems  
4 platform or software, a GIS software. I added the  
5 census data as a layer on the maps. I overlaid Mr.  
6 Fairfax's districts. I then overlaid a map of  
7 election returns by precinct. I then used the  
8 software to assure that the boundaries were aligned.  
9 And then I aggregated vote totals into these new  
10 illustrative and modified -- modified illustrative  
11 and modified alternative plans.

12 Q. Are you still of the opinion as you were  
13 in your August 26th report that 15 precincts are too  
14 few to generate good ecological inference estimates?

15 MS. GREENWOOD: Objection. Continue.

16 A. It depends on the -- it depends on the  
17 CVAP in those districts.

18 BY MR. BOYNTON:

19 Q. Okay. So for purposes of your analysis  
20 of these modified plans what is the minimum number  
21 of precincts needed for ecological inference to  
22 provide reliable estimates?

23 A. (Audio interruption.)

24 THE REPORTER: I'm sorry, Dr. Spencer.  
25 I can't hear you.

1           A.       (Audio interruption.)

2                   Am --

3                   THE REPORTER:   There you are.

4           A.       -- I still --

5 BY MR. BOYNTON:

6           Q.       Okay.   We just got you back.

7           A.       Okay.   Sorry.   I'm not sure.

8                   The number of precincts is relevant, but  
9 not by itself, only as it interacts with the CVAP of  
10 the particular precincts themselves.  15 could be  
11 enough, but it's not necessarily too few or too  
12 many.

13           Q.       How many precincts were included in  
14 Modified Illustrative Plan District 1?

15           A.       I don't remember off the top of my head,  
16 but I could look if you -- if it's important.

17           Q.       Well, tell me what you remember first.  
18 Is it more than 30 precincts?

19           A.       I remember it being in the range of 15  
20 to 20 perhaps.

21           Q.       And was the number of precincts in  
22 Modified Illustrative Plan District 2 the same  
23 number of precincts, smaller or larger?

24           A.       Smaller or larger than what?

25           Q.       The number of precincts in District 1.

1           A.     Oh. I don't remember that. They're  
2 pretty close. They're both 12, 15, 20, something  
3 like that.

4           Q.     What do you remember about the -- the  
5 voting behaviors precinct to precinct (audio  
6 interruption) -- of the Modified Illustrative  
7 Plan --

8                   THE REPORTER: I'm sorry, Chris. I  
9 missed the middle of your question.

10          BY MR. BOYNTON:

11          Q.     What do you remember about the voting  
12 behavior of the various precincts that you included  
13 in Modified Illustrative Plan 1 analysis?

14                  MS. GREENWOOD: Objection. Do you mean  
15 Modified Illustrative Plan District 1?

16                  MR. BOYNTON: Yes. Thank you.

17          A.     I'm not -- I -- I'm not sure I have any  
18 particular recollection. Sorry.

19          BY MR. BOYNTON:

20          Q.     Okay. I mean do you recall if there are  
21 any majority-Hispanic precincts in District 1 of the  
22 Modified Illustrative Plan?

23          A.     I don't -- I don't have that information  
24 directly in front of me, and I don't recall,  
25 unfortunately.



1 Q. Do you recall anything about the  
2 demographics of District 1's precincts?

3 A. Not of the individual precincts off the  
4 top of my head, no.

5 Q. Okay. So do you know if the information  
6 upon which Mr. Fairfax drew his map was based on  
7 actual Virginia Beach precincts or not?

8 A. When I first received the maps I -- I  
9 created my own underlying census blocks and  
10 precincts, and when I aggregated them into the  
11 districts the first thing I did was compare the  
12 total number of majority-minority population -- or  
13 excuse me -- the minority population to confirm that  
14 I -- my reading of the data was the same as  
15 Mr. Fairfax's. And I was able to confirm that, that  
16 the population was 50.3 or 51 percent or something.  
17 When those numbers aligned then I did my own  
18 analysis of voting totals.

19 Q. Did you do any analysis of Asian voting  
20 behavior in any of the six districts that are  
21 contained in the three plans you analyzed?

22 A. Not -- not independently, or not -- not  
23 that's included in the report, no.

24 Q. Did you do any analysis of Hispanic or  
25 Latino voting behavior in the six districts that are

1 contained within the modified plans?

2 A. Not that's presented. What's presented  
3 in the tables on page 6 are kind of a racially  
4 polarized voting analog to the analysis in the  
5 report, my report number one, for all minority  
6 voters.

7 Q. In your opinion, does any version of the  
8 three plans for District 1 or District 2 have  
9 sufficient precincts for ecological inference to  
10 generate reliable estimates of group voting  
11 preference?

12 A. I would say that I'm less su -- I'm not  
13 confident (audio interruption) of an ecological  
14 inference estimate for District 1 --

15 THE REPORTER: I'm sorry --

16 A. -- so --

17 THE REPORTER: -- Dr. Spencer. You  
18 broke up.

19 THE DEPONENT: Okay. Can you hear me  
20 now?

21 THE REPORTER: Can you -- I can.

22 A. I'm -- I'm less confident of an  
23 ecological inference of voting patterns in District  
24 1 because there's far less dispersion between the  
25 different precincts, which is shown in the tables on

1 page 6 of the supplemental report, than I would be  
2 of ecological inference estimates in District 2  
3 where the dispersion of CVAP among the precincts is  
4 much larger.

5 BY MR. BOYNTON:

6 Q. Can you tell me what in your mind is the  
7 difference between a coalition district and a  
8 crossover district?

9 A. So a coalition district in my mind is a  
10 -- is a district that is comprised of a majority of  
11 a minority population. A crossover district is a --  
12 a definition that would include white voters who  
13 have shown a -- a preference for or a voting pattern  
14 in favor of the minority candidate of choice, its --  
15 to some degree.

16 Q. So what have you done to determine  
17 whether the map -- the -- the three modified maps  
18 you -- or plans you reviewed had coalition voting  
19 rather than crossover voting?

20 A. So the purpose of generating these  
21 estimates was simply to say in these two districts  
22 were minority candidates of choice who lost their  
23 election under the current election rules able to  
24 secure a better outcome in these districts, period.

25 Q. All right. (Audio interruption) your

1 analysis of crossover district -- or crossover  
2 voting versus --

3 THE REPORTER: Chris. Chris.

4 BY MR. BOYNTON:

5 Q. -- coalition voting?

6 THE REPORTER: Chris, i didn't hear the  
7 first part of your question.

8 BY MR. BOYNTON:

9 Q. Does that mean then that you did not do  
10 an analysis of whether the performance of these  
11 plans is related to crossover voting versus  
12 coalition voting?

13 A. The purpose of the maps was just to show  
14 whether the candidates would have fared better in  
15 these districts regardless of the mechanism.

16 Q. So that was not part of the analysis,  
17 correct?

18 A. That's correct.

19 Q. Give me a moment.

20 Looking at your District 1 performance  
21 on page 4 of your supplemental report you have  
22 chosen nine representative races, correct?

23 A. I count seven.

24 Q. Well, tell me how you count seven  
25 races -- no, I'm sorry -- nine candidates of choice?

1           A.     That is correct, yes. Nine candidates  
2 of choice in seven races.

3           Q.     How did you select those seven races and  
4 nine candidates?

5           A.     So from the original report, my first  
6 report, where I identified minority candidates of  
7 choice and noted which candidates had won and lost  
8 in every race, I selected the races where a minority  
9 candidate of choice had lost their election. Some  
10 of those cases included a minority candidate of  
11 choice who also won, for example in the 2018  
12 at-large election where the minority candidate of  
13 choice White lost, which is why I included that  
14 race. But because I included that race that also  
15 includes Mr. Rouse, who won. The seven elections  
16 were selected because they featured a candidate of  
17 choice in the minority community who had lost their  
18 election under the current election rules since  
19 2008.

20          Q.     But is there any academic or research  
21 support for selecting only candidates who lost to  
22 determine districts' performances?

23          A.     My interpretation of what the court  
24 requires in Gingles is that at the outset some  
25 showing of an illustrative plan where candidates who

1 lost would be able to perform better and win their  
2 elections drove my decision to focus my analysis on  
3 those particular candidates.

4 Q. Did you perform any analysis of which of  
5 these candidates actually list -- lived in the -- in  
6 District 1 as drawn in the three plans?

7 A. I did not.

8 Q. Isn't that relevant to whether they can  
9 even run in those districts?

10 A. It would be -- if these were the plans  
11 that were ultimately adopted, that would be a  
12 relevant criteria. Yes.

13 Q. Do you know, sitting here today, if any  
14 of the seven candidates who lost or even the two who  
15 won (audio interruption) in District 1 at any point  
16 in time in the last 12 years?

17 A. Sorry. I didn't capture the -- the very  
18 middle of that question. Can you repeat?

19 Q. Sure. Of the -- the seven races and  
20 nine candidates of choice that you've selected to  
21 look at on page 4 for your District 1 performance  
22 analysis do you know if any of them lived in  
23 District 1 as drawn under the three maps?

24 A. I don't know.

25 Q. Does your selection of these nine

1 candidates of choice have any bearing upon what you  
2 considered to be probative races in your prior  
3 analysis?

4 A. No. I considered these seven races  
5 merely to be probative of the question of -- of  
6 performance of these districts.

7 Q. So they are a subset of the -- the --  
8 the races you previously defined as probative?

9 A. That is correct.

10 Q. And -- and you have omitted from prior  
11 probative races the 2012 Ross-Hammond election,  
12 correct?

13 A. I can't remember. If -- if you'll give  
14 me a moment to review my first report, I can confirm  
15 that.

16 Q. Certainly, but I was actually  
17 referencing back to your second report because I  
18 think we -- we went from approximately 17 or 19 down  
19 to approximately 13, taking out the three Furman  
20 races, as I recall, and maybe one other. Does that  
21 sound correct?

22 MS. GREENWOOD: Objection.

23 A. Right. I don't believe that it was  
24 Ross-Hammond, though. I believe it may have been  
25 the race between Jackson and Flores in 2008.

1 BY MR. BOYNTON:

2 Q. But -- agreed, but, to be clear, what  
3 I'm trying to go from is what races you defined as  
4 probative in your rebuttal report and worked to  
5 here. I'm not trying to retrace the first results.  
6 I'm trying to go from October 1st to today.

7 A. Okay.

8 Q. So I -- I want you to start with the 13  
9 races that were probative in -- in your -- your  
10 rebuttal report, Exhibit 2, and tell me why you  
11 omitted the ones you omitted in this report.

12 A. Got it.

13 MS. GREENWOOD: Objection to the extent  
14 that -- yeah. Actually, objection.

15 BY MR. BOYNTON:

16 Q. You can answer.

17 A. So if I look at my rebuttal report in  
18 Appendix B on page 15 where I list -- where I begin  
19 listing -- no. Excuse me. That's only an update.

20 It would take me a moment, so let me  
21 explain my general logic. And if that's not  
22 sufficient, I'm happy to go through the reports.

23 Of the 13 probative races that I  
24 identified in the rebuttal report I then identified  
25 seven races where a minority candidate of choice



1 lost their election. There were some races where a  
2 minority candidate of choice won their election  
3 without there being a second minority candidate of  
4 choice who lost. Those were the cases that -- the  
5 races that were omitted from this particular  
6 analysis of the supplemental report.

7 Q. Okay. I think maybe your 13 races are  
8 found at page 8 of Exhibit 2.

9 A. Yep, that's correct. Thank you.

10 Q. Okay. So which of the -- of the  
11 candidates that you identified as probative in your  
12 rebuttal report did you eliminate consideration of  
13 in your supplemental report?

14 A. Got it. So I do eliminate the  
15 Ross-Hammond race in 2012 because Ms. Ross-Hammond  
16 won that election in the Kempsville district in  
17 2012.

18 Q. Okay.

19 A. And I eliminate the 2008 Kempsville race  
20 because there was not evidence of all-minority  
21 cohesion between Mr. Andrew Jackson and Mr. José  
22 Flores, who ran against each other, both of whom  
23 lost their election that -- in that year.

24 I -- I exclude Barbara Henley from the  
25 Princess Anne district in 2014, a white candidate

1 who was the minority candidate of choice, because  
2 she won her election.

3 And I include the Bellitto race even  
4 though, according to this table, at the time --  
5 excuse me. I include the Bellitto race in 2010  
6 because there was a candidate of choice in that  
7 race, Mr. Jackson, and Mr. Cabiness in fact, who did  
8 not win the election even though Bellitto won the  
9 election.

10 Q. So the fourth one you omitted is -- is  
11 Wooten 2018? Does that sound correct?

12 A. Yes, that's correct.

13 Q. Your reasons for omitting her are?

14 A. That she won her election.

15 Q. Okay. So I'm not still understanding  
16 your answer on how this analysis addresses cohesion.  
17 I understand how you say it addresses Gingles 3,  
18 i.e., the -- the -- the possible white bloc voting  
19 to overcome a candidate, but where -- where in -- in  
20 your analysis do you actually address cohesion  
21 between and among the three minorities that you say  
22 are cohesive in these races from prior testimony?

23 A. The analysis is simply that in race --  
24 in districts where the population of minority  
25 candidates exceeds 50 percent -- candidates who are

1 preferred by the all-minority communities were  
2 performing better in these districts. That's the  
3 extent of the analysis, so...

4 Q. So you -- you did no granular research  
5 on Asian voting in these precincts -- or in these  
6 districts for purposes of this anal -- this report?

7 A. That is correct. That -- that kind of  
8 analysis does not appear in my supplemental report.

9 Q. Now, you referenced use of ACS data in  
10 some capacity. Can you explain that to me, please?

11 A. Yes. So the demographic information of  
12 these precincts is based on census blocks which are  
13 published by the American Community Survey and the  
14 data that were used to build up these maps from the  
15 five-year ACS sample that runs between 2014 and  
16 2018.

17 Q. What -- what is the difference between  
18 the ACS and the census, in your understanding?

19 A. Well, the ACS is a product of the  
20 census. The word "census" is sometimes used  
21 interchangeably with the long-form decennial census  
22 report. ACS represents one percent of the  
23 population and is administered each year and has  
24 more questions than the census that people think  
25 about every ten years.

1 Q. How accurate is the ACS as compared to  
2 the decennial census?

3 A. It depends on the questions that are  
4 asked in the ACS. It's a representative sample. So  
5 there are -- it's -- because it's not a total  
6 population measure there are standard errors to  
7 compensate for any uncertainty in the questions.

8 Q. Can you rely on ACS data to conduct your  
9 analysis, in your opinion?

10 A. In my opinion, yes.

11 Q. Is -- is -- once a census is available  
12 is that a more reliable dataset for determining  
13 district performance?

14 MS. GREENWOOD: Objection.

15 A. I -- I think the answer is somewhat  
16 nuanced. So the census -- and I'll provide the best  
17 answer that I can and -- and -- and you can follow  
18 up if it's not sufficient.

19 The census is conducted once every ten  
20 years. So I think in the very first year that the  
21 census data is made available it's more accurate  
22 than the American Community Survey. But within a  
23 year or two that census data is already outdated,  
24 and then I believe the ACS data provides a better  
25 snapshot of where we are in terms of the questions

1 that are being asked and are relevant.

2 BY MR. BOYNTON:

3 Q. You rely on ACS data at least in part  
4 for your analysis as to the behavior of minority  
5 voter populations in this case, correct?

6 A. Yes, I -- that is correct.

7 Q. Okay. Okay. Do you recall what the ACS  
8 says as to Hispanic and Latino being a separate race  
9 category or not?

10 A. My understanding is that on the -- the  
11 -- the questionnaire for the ACS respondents are  
12 asked their race and Hispanic/Latino is a separate  
13 question.

14 Q. Okay. And is Asian a single race  
15 category on the ACS?

16 A. I'm not 100 percent certain. My  
17 understanding is that it -- it is a  
18 single-check-boxed question with the opportunity to  
19 specify a more granular place of origin for your  
20 family if you choose.

21 Q. Okay. Well, let's look at the actual  
22 census form from 2010 to compare. It's Exhibit 14.  
23 I'll give you a moment to get to it. I know you're  
24 looking at it online.

25 A. I think from the attachment that you

1 sent to me it may be page 121. Does that sound  
2 about right, or maybe --

3 Q. It's toward the end of the last batch of  
4 attachments. It's Exhibit 14, which is, you know,  
5 almost the end. I -- I actually have a version  
6 myself that I'm working from so I don't know about  
7 that number, but it says Census 2010. It's the  
8 first page of Exhibit 14.

9 A. Yeah. I'm almost there.

10 Q. And please take your time. I'm not  
11 trying to rush you through it.

12 A. Okay. I see that first 2010  
13 questionnaire.

14 Q. Okay. So at least as to the census in  
15 2010 question 8 seems to be how the census was  
16 getting at the Spanish, Latino or Hispanic origin,  
17 correct?

18 MS. GREENWOOD: Objection.

19 A. Excuse me. Question 8 is -- it looks  
20 like it asks if the member of the household is of  
21 Hispanic, Latino, Spanish origin, yes.

22 BY MR. BOYNTON:

23 Q. Okay. And look at the note right above  
24 that. What does the note say for this particular  
25 census?

1           A.       So it asks respondents to answer both  
2       the question about Hispanic origin and the following  
3       question about the person's race. It then says,  
4       "For this census, Hispanic origins are not races."

5           Q.       Okay. So at least for the 2010 census  
6       Hispanic origin was not deemed a race, from the form  
7       at least?

8           A.       The form includes that statement, "For  
9       this census, Hispanic origins are not races," not  
10      part of question 9.

11          Q.       Now, how many different Hispanic, Latino  
12      or Spanish origins do they list under question 8?

13          A.       Well, by my count you can check a -- a  
14      box one of four options; Mexican, Mexican American,  
15      Chicano, Puerto Rican, Cuban, and then there's also  
16      some examples given if somebody would like to  
17      identify something else. So Argentinian, Colombian,  
18      Dominican, Nicaraguan, Salvadorian, Spaniard, and so  
19      on. So of the -- the -- the Hispanic origins that  
20      are listed -- one, two, three, four, five six,  
21      seven, eight, nine -- I count 11.

22          Q.       Did -- did any of your cohesion analysis  
23      in this case drill down on any of those 11 different  
24      origin groups?

25          A.       No, it did not.

1           Q.     Okay. Is there a reason why that your  
2 cohesion analysis did not address any of these  
3 specific Hispanic or Latino origin groups?

4           A.     There were a few reasons, I suppose.  
5 One is that the purpose of this report was to  
6 provide an analysis of whether the minority  
7 candidate of choice performed according to all  
8 minority voters. And the conventional approach to  
9 determining minority populations is to look at major  
10 racial categories, and in this case it's black,  
11 Hispanic and Asians.

12          Q.     Do you have any knowledge independent of  
13 quantitative data analysis of Hispanic or Latino  
14 voting behavior or trends in Virginia Beach?

15          A.     Aside -- in general, I would say I'm not  
16 -- I'm not so sure. I do recall, and I would have  
17 to look back in my findings, some evidence that  
18 there was some campaigning done re -- related to a  
19 Hispanic candidate that dealt with some  
20 subcategories. At some point along the way I  
21 remember seeing an advertisement, but I don't recall  
22 off the top of my head.

23          Q.     But at least one race that you looked at  
24 involving a Hispanic candidate, Flores, and a black  
25 candidate, I believe Jackson, you determined was not



1 a cohesive race, correct?

2 A. That is correct.

3 Q. Okay. Now, turning to designation of --  
4 of Asian origin, would -- would you look at question  
5 9, please?

6 A. Of the 2010 census?

7 Q. Yes. Same page, just the next question.

8 A. Okay.

9 MS. GREENWOOD: Objection. Can you  
10 identify for the record which exhibit? Is this  
11 Exhibit 14?

12 MR. BOYNTON: Yes. Sorry for that.

13 A. I see the question.

14 BY MR. BOYNTON:

15 Q. Okay. Is there a single box to -- to  
16 check if you're Asian on the 2010 census?

17 A. There is not.

18 Q. Okay. How many different Asian origin  
19 groups are listed under question 9?

20 A. Well, like before, there are  
21 possibilities for people to add and -- and so on, or  
22 et cetera, so -- but at least according to check  
23 boxes it looks like 13.

24 Q. Now, did you make any analysis of -- of  
25 voter cohesion in Virginia Beach among those 13

1 different Asian origins?

2 A. No, I did not.

3 Q. Do you have any independent knowledge  
4 separate and apart from statistical analysis that  
5 you performed in prior reports of -- of voting  
6 behaviors of these different Asian-origin subsets?

7 A. With respect to Virginia Beach you mean?

8 Q. Specific to Virginia Beach.

9 A. I do not specifically -- it's -- the  
10 kind of systematic vote differences in Virginia  
11 Beach in this time period, I do not have knowledge  
12 of that.

13 Q. Okay. Turning your attention to then  
14 Exhibit 15, which is the 2020 census form -- take a  
15 moment to get there.

16 A. Okay. I see it.

17 Q. I believe the questions that we're going  
18 to look at are on page 2.

19 A. I see that. Yes.

20 Q. Question 8 I'd focus your attention on  
21 on page 2 of Exhibit 15.

22 A. I see it.

23 Q. How does the 2020 census address  
24 Hispanic origin?

25 A. It looks very similar, if not exact, to

1 the 2010 census.

2 Q. Is -- is that the case with how the 2020  
3 census treats Asian origin as well?

4 A. It looks very similar. I -- it does --  
5 it does not look exactly the same, just based on my  
6 memory, but it looks very similar.

7 Q. Okay. Under the opportunity to mark a  
8 person's race as white it lists examples in question  
9 9, correct?

10 A. That is correct.

11 Q. And -- and one of those examples is  
12 Egyptian, correct?

13 A. That is correct.

14 Q. Do you, sitting here today as an expert  
15 in this case, have any understanding for why  
16 Egyptian, which is a country in Africa, is listed as  
17 white versus being of African American origin?

18 A. Well, I -- besides the fact it's listed  
19 as one possible example and not inclusive of white,  
20 I -- I do not.

21 Q. Do you -- do you have any other insight  
22 or knowledge of how the census developed its  
23 categories for -- for national decennial census  
24 purposes?

25 A. I don't have information about their

1 decisions on those subcategories, no.

2 Q. Now, going -- making sure I've -- I've  
3 gotten your answer correct -- I know you -- we  
4 talked about the subgroups of -- of Asian American  
5 voters and of Hispanic American voters. Is it your  
6 testimony also that you do not have specific factual  
7 knowledge of Hispanic voting behavior in Virginia  
8 Beach generally other than your statistical  
9 analysis?

10 A. I would say that as a general matter  
11 that is correct.

12 Q. And the same thing with general Asian  
13 American voting trends in Virginia Beach? You don't  
14 have personal knowledge other than statistically set  
15 forth in your prior reports?

16 A. That -- generally speaking, that is  
17 correct.

18 Q. Are there any exceptions that you have  
19 in mind?

20 A. I think there may be an exception to  
21 this. I looked through my records. I recall seeing  
22 an advertisement that -- maybe about a Filipino  
23 candidate in Virginia Beach, perhaps before 2008, if  
24 I recall correctly. There is something in -- in  
25 that realm that comes to mind, but systematically in

1 terms of the voting preferences of these subgroups  
2 of Hispanic and Asian communities systematically  
3 over this decade I don't have a -- a -- a deep  
4 understanding.

5 Q. Do you recall if the -- the Filipino  
6 candidate you recall from 2008 ran as a more  
7 conservative, more liberal or more moderate  
8 candidate?

9 A. I don't recall anything about the  
10 content of the message. It's just that that ad is  
11 in my mind somewhere.

12 Q. Okay. Now, when -- it's possible for  
13 people to check more than one box, correct?

14 MS. GREENWOOD: Objection. I'm sorry.  
15 Are we talking about --

16 MR. BOYNTON: Oh, yeah. Okay. I -- I  
17 can rephrase. That's fine.

18 BY MR. BOYNTON:

19 Q. It -- it -- certainly, you know, on the  
20 ACS and on the census a -- a person might identify  
21 as more than one ethnic group, correct?

22 MS. GREENWOOD: Objection.

23 A. I -- so I -- like, according to the  
24 instructions for question number 8 and 9,  
25 respondents are supposed to answer questions 8 and

1 9. And I see that the question to number 9 says you  
2 may mark one or more boxes and print origins.

3 BY MR. BOYNTON:

4 Q. So my -- my question is specific to your  
5 analysis in this case. How did you treat people who  
6 identified with multiple group -- multiple ethnic or  
7 racial groups?

8 A. So two -- one clarification and then one  
9 direct response.

10 As a point of clarification, I wasn't  
11 relying on these decennial census questions, but I  
12 was relying on the American Community Survey  
13 questions, which I do believe are different than  
14 these long-form census questions. But to that  
15 degree there are still respondents in the American  
16 Community Survey who appear as more than one race.  
17 And my analysis of the racial breakdown in -- for my  
18 reports are non-Hispanic white, non-Hispanic black,  
19 Hispanic or -- or Latin or Spanish origin, and then  
20 all Asian. Now, those are categories provided by  
21 the census itself that aggregates these  
22 subcategories into an Asian category itself, so I  
23 have not done that aggregation myself and decided  
24 whether Filipino or Samoan counts as Asian. I've  
25 relied on the census's own categorization for those

1 determinations.

2 Q. So if a person was identifying as both  
3 white and one of the three minority groups, what --  
4 what column did they fall in? Were they minority or  
5 not minority?

6 A. If the -- the respondent was -- had  
7 checked white and Hispanic, then they would appear  
8 as in the Hispanic category. If they were to check  
9 the box white and something else, then they were  
10 excluded from the analysis because I relied only on  
11 people who chose one race, unless it was Hispanic,  
12 because that's a separate question.

13 Q. And all of the data you looked at was  
14 ACS data not census data, or did you also look at  
15 2010 census data?

16 A. I need to confirm in my records whether  
17 for the 2010 race I relied on the 2010 long-form  
18 census, but for every other race I relied on the  
19 American Community Survey.

20 Q. Now, tell me the -- the mathematical  
21 process -- and -- and -- and we're still on page 4  
22 of your supplemental report, Exhibit 10. The -- the  
23 -- just tell me the mathematical process that  
24 generated each of the numbers in that very first  
25 row, 2018 Rouse.

1           A.     Got it.

2           Q.     What does that at-large number  
3 represent?

4           A.     So the at-large number represents the  
5 proportion of ballots that Mr. Rouse actually  
6 received in the 2018 at-large race. The Modified  
7 Illustrative Plan and the Modified Alternative Plans  
8 number 1 and 2 reflect the proportion of votes that  
9 Mr. Rouse would have earned if he had been running  
10 in those districts at that time hypothetically.

11           Q.     And to generate that very first Modified  
12 Illustrative Plan 61.1 did -- how did you do that?  
13 How did you calculate 61.1?

14           A.     I have vote totals that are generated by  
15 Virginia Beach elections division by precinct. And  
16 I overlay the precinct vote totals onto these  
17 illustrative maps. And then I use a function that  
18 is a geographic -- it's called Spatial join. And it  
19 categorizes -- it aggregates up all of the vote  
20 totals in a precinct if it's completely inside of  
21 the district, and if it straddles the district line  
22 then the mapping software apportions the number of  
23 votes to the district based on the percentage of  
24 geography that's actually within that district. And  
25 I aggregate those numbers to find Mr. Rouse's



1 support.

2 Q. So there is some possibility that your  
3 analysis includes (audio interruption) --

4 A. Sorry. I heard you say there's some  
5 possibility my analysis includes, and then I lost  
6 the last part. Sorry.

7 Q. Splitting precincts.

8 A. Splitting precincts. Yes.

9 Q. Okay. So did you make an adjustment  
10 somehow based on ACS data '14 through '18 cycle to  
11 change that number to 61.1?

12 MS. GREENWOOD: Objection.

13 A. No, I did not. That number is based on  
14 the precinct vote totals.

15 BY MR. BOYNTON:

16 Q. So tell me how ACS data factored into  
17 your analysis of the performance of the various  
18 districts.

19 A. So the ACS analysis appears in the --  
20 the figures on page 6 of the report.

21 Q. And if -- describe for me what those  
22 boxes represent.

23 A. So these boxes are an aggregation of  
24 individual analyses of racially polarized voting for  
25 each candidate in each district in each race.

1                   So if we just look, for example, at the  
2     top left panel, which is Georgia Allen from 2008 in  
3     District 1, on the X axis horizontally left to right  
4     is the percentage of non-white CVAP. This is  
5     analogous to the -- the figures that I presented in  
6     my original report. And the Y axis, which is  
7     vertical, shows the proportion of votes.

8                   So what this shows -- and the X axis is  
9     built using the American Community Survey data 2014  
10    to 2018 for this race, for -- for these maps. This  
11    shows that Ms. Allen would earn approximately, you  
12    know, somewhere close to 50 percent -- 45-50  
13    percent, if you zoomed in, in all of the precincts.  
14    And you can also see from the CVAP data that all of  
15    the precincts in District 1 have a CVAP that's  
16    pretty close to .5.

17                  Then -- then the boxes are shaded if the  
18    candidate would have won the election, meaning they  
19    would have earned enough votes to defeat all of the  
20    other people running against them during that race  
21    in each of these districts throughout.

22                  Q.     So if it's a shaded box it's a win, if  
23    it's not shaded it's a loss?

24                  A.     In -- yes, correct, in this  
25    counterfactual analysis of the illustrative

1 districts.

2 Q. And you're running as -- regardless of  
3 residence, clearly on losing -- a minority -- or  
4 minority candidates of choice who lost the race?

5 A. That is correct.

6 Q. And so when you write up top in your  
7 findings, "In the panel of figures below, I plot  
8 voter support for each of the minority candidates of  
9 choice that lost between 2008-2018..." you are not  
10 making a statement about what races you deemed  
11 probative for your earlier analysis?

12 A. That's correct.

13 Q. Okay. Do you agree with the following  
14 statement: Hispanic and Asian voting patterns track  
15 black voting patterns in Virginia Beach?

16 A. Sorry. Repeat one more time.

17 Q. Do you agree with this statement:  
18 Hispanic and Asian voting patterns track black  
19 voting patterns in Virginia Beach?

20 A. As a general matter over the course of  
21 the -- the years that I studied, yes, I think that's  
22 -- that's my opinion.

23 Q. And -- and what particular analyses  
24 informed that opinion?

25 A. So much of that analysis was provided in

1 the initial report and clarified in the second  
2 report. I guess I -- that -- that's where the --  
3 the vast majority of the analysis for that opinion  
4 is -- comes from.

5 Q. My understanding of your prior testimony  
6 was it was not possible to tell under the  
7 traditional metrics of homogenous precincts  
8 ecological regression or ecological inference voting  
9 behaviors of Asians or Hispanics in Virginia Beach.  
10 Is that still the case?

11 MS. GREENWOOD: Objection to the extent  
12 that you're asking questions you've asked before and  
13 you are only asking questions about prior reports.

14 MR. BOYNTON: I'm asking him if he's  
15 changed his opinion.

16 A. The opinion with respect to one specific  
17 point estimate for an individual candidate and their  
18 support from an Asian community -- I have not  
19 provided that to the court. And in fact part of  
20 this supplemental report was to explain why that was  
21 not a -- a reliable enterprise.

22 Systematically over the course of the  
23 entire period that I studied I see high levels of  
24 cohesion among all of these groups together,  
25 including when we separate out the black community

1 and other communities as well and compare them. And  
2 importantly as a group -- as a coalition the  
3 preference -- the preferences that that coalition  
4 shares in the 13 races that I identified in my  
5 supplemental report, eight of those candidates who  
6 were preferred by that coalition have been defeated  
7 due to white bloc voting. And so that's the --

8 BY MR. BOYNTON:

9 Q. How do you know they shared that  
10 candidate's opinion -- or this preference? If you  
11 don't know who Asians preferred specifically, how do  
12 you know they preferred any specific candidate?

13 MS. GREENWOOD: Objection, asked and  
14 answered. Go ahead.

15 A. I would say that in the same way that I  
16 have not provided any point estimate for any  
17 individual African American voter in their  
18 preference for a particular candidate, but I have  
19 made a -- a showing about the African American  
20 community in general that is, I think, persuasive  
21 and meets the standard of -- of evidence in Section  
22 2 cases.

23 The same can be said of these coalition  
24 groups where in some cases I don't have a specific  
25 independent reliable estimate of the Asian

1 preference, but as a group -- we see that as a group  
2 systemically over time the minority-preferred  
3 candidates are losing their elections.

4 BY MR. BOYNTON:

5 Q. To a reasonable degree of scientific  
6 certainty can you determine Asian voter behavior in  
7 Virginia Beach?

8 MS. GREENWOOD: Objection.

9 A. State the question one more time while I  
10 think about the -- the terms that were used. Sorry.

11 BY MR. BOYNTON:

12 Q. To a reasonable degree of scientific  
13 certainty can you calculate the voting behavior of  
14 Asian voters in Virginia Beach?

15 MS. GREENWOOD: Objection.

16 A. Not -- given the dispersion of the Asian  
17 community, which we discussed before, the metrics  
18 that we have are -- at least as was shown in the  
19 supplemental report are not particularly reliable.  
20 No.

21 BY MR. BOYNTON:

22 Q. And that's the case for the Hispanic  
23 community as well, correct?

24 MS. GREENWOOD: Objection.

25 A. Yeah, with the same kind of caveats to

1 their dispersion in the community.

2           These particular metrics -- I mean  
3 you're asking if there's any way to determine the  
4 Asian and Hispanic preferences. And -- and given --  
5 I'm not trying to be coy. I'm just trying to be  
6 clear.

7           To the extent that it's possible, I  
8 would say if I went and asked every single one of  
9 them door to door, then I would have reliable  
10 scientific certainty of their preferences. But  
11 given aggregate statistical information about the  
12 groups and their dispersion among the precincts,  
13 then reliable estimates are not always possible.  
14 Sometimes yes, but not always. The confidence  
15 intervals can become quite large.

16 BY MR. BOYNTON:

17           Q. Well, then, generally speaking, they're  
18 not possible in Virginia Beach, correct?

19           MS. GREENWOOD: Objection, asked and  
20 answered.

21           A. Generally speaking, that is correct.

22 BY MR. BOYNTON:

23           Q. Can you tell me, based on your  
24 expertise, is a white Democrat more or less likely  
25 than a Republican to vote for a minority candidate

1 of choice in Virginia Beach?

2 MS. GREENWOOD: Objection. Can I just  
3 jump in again? We're moving right out -- away from  
4 the supplemental report here. I'm not sure how many  
5 of these questions you have. I've sort of let it go  
6 on a little bit because you said you were updating  
7 to see whether he had --

8 MR. BOYNTON: I don't have a lot.

9 MS. GREENWOOD: Yeah. Thanks.

10 A. So many of these races are run without a  
11 -- a particular partisan affiliation for the  
12 candidates, so I don't have a -- a strong opinion  
13 about your question whether white Democrats would  
14 perform better than a white Republican or -- or --  
15 or those combinations, no.

16 BY MR. BOYNTON:

17 Q. Are you aware of any changes in the  
18 census for 2020 as compared to 2010 as to how they  
19 count members-of-the-military residents?

20 MS. GREENWOOD: Objection.

21 A. No. I -- I can't recall. No.

22 MR. BOYNTON: Why don't we go ahead and  
23 take about a five-minute break. We've been going  
24 for a while. Is that fair? We all just stay on the  
25 line and kind of come back so we don't have to set



1 this up again. Does that work for everybody?

2 MS. GREENWOOD: Yeah. I guess we might  
3 mute and turn our videos off until we're ready to  
4 come back. Shall we come back at --

5 MR. BOYNTON: Yeah.

6 MS. GREENWOOD: -- five minutes? Okay.

7 THE DEPONENT: Five minutes all right?  
8 My clock says 12:25 or 12:23. 12:30, does that  
9 sound about right?

10 MR. BOYNTON: 12:30 is perfect. Thank  
11 you, Doug.

12 (Recess)

13 BY MR. BOYNTON:

14 Q. A couple -- I'm back on the record, if  
15 everybody's ready.

16 A. I'm ready.

17 Q. Okay. A couple of cleanup questions  
18 that go back to the things we've touched upon.

19 I -- I made mention of that the fact  
20 that the 2020 census is changing how it counts the  
21 military members. Did you in your analyses --  
22 your analyses thus far make any analysis or -- or  
23 effort to determine the impact on changes in  
24 military residency under the census, how that would  
25 affect these districts?

1           A.     I -- the short answer is not, but I'd  
2     like to just add that I'm not sure how the ACS deals  
3     with the question about residence of military  
4     personnel. And -- and -- and so with that caveat I  
5     would say no, I did not.

6           Q.     And you have not done anything based  
7     upon any expectation of what the 2020 census will  
8     provide?

9           A.     That's correct. I have not anticipated  
10    the 2020 census.

11          Q.     You told me that -- when we were talking  
12    about 15 precincts may or not be too few to generate  
13    good ecological inference estimates that it was tied  
14    to CVAP in -- in that -- those areas, that district,  
15    I suppose. What did you mean by that? How -- how  
16    -- what level of CVAP and what type of CVAP are we  
17    talking about that makes fewer than 15 precincts  
18    reliable?

19                MS. GREENWOOD: Objection to the extent  
20    you mischaracterized.

21                MR. BOYNTON: Okay. Well, I'm -- I'm  
22    happy to have him characterize for me --

23                MS. GREENWOOD: Right.

24                MR. BOYNTON: -- if that would be  
25    better.

1 MS. GREENWOOD: He can answer that  
2 question then. Sure.

3 A. So in -- in -- as brief as possible, if  
4 you look at page 6 of my supplemental report, which  
5 is Exhibit 2, if you're looking at...

6 BY MR. BOYNTON:

7 Q. (Indicating.)

8 A. You can see, as I pointed out before, in  
9 District 1, if we focus again on the top left panel  
10 of Ms. Allen in 2008, that the dispersion, meaning  
11 the percentage of C -- of minority CVAP in each  
12 precinct, doesn't vary greatly. So if -- ev -- if  
13 -- if this were the pattern of CVAP distribution  
14 among precincts, even with a hundred precincts the  
15 estimates may not be particularly reliable.

16 If you look at District 2, Ms. Allen,  
17 where there's more dispersion, meaning there are  
18 some precincts that are 25 percent minority CVAP and  
19 some that are close to 75 percent, there's more  
20 dispersion, which then allows us to make more  
21 reliable estimates about the minority voting  
22 preferences. And the fur -- in general, the more  
23 dispersed the CVAP is the fewer the precincts you  
24 might need to get a reliable estimate, and the more  
25 contracted they are the more precincts you would

1 need to get, but there's no mathematical cutoff at  
2 15 or at 25 if CVAP is at .75. It's a -- it's an  
3 interaction between those two inputs.

4 Q. It's really the variability in the CVAP  
5 that allows you to use fewer precincts?

6 A. I think as a general matter I would  
7 agree with that statement, yes.

8 Q. And in this case we're talking about min  
9 -- all-minority voter CVAP?

10 A. That is correct.

11 Q. And then for purposes of the  
12 supplemental expert report you used only ACS data  
13 series 2014 to 2018?

14 A. That is correct, yes.

15 Q. For your earlier reports you used ACS  
16 series 2013 to 2017?

17 A. Yes.

18 Q. Okay. On pages 7 and -- well, 7 through  
19 15 it looks like of your supplemental report you  
20 depict various elections of -- of candidates both  
21 who prevailed and lost under District 1 and District  
22 2. What -- what was your process in -- in the --  
23 making that calculation?

24 A. So these figures illustrate the relevant  
25 takeaway from the tables on pages 4 and 5 of the

1 supplemental report, but instead of reporting in  
2 these bar charts the vote total that Mr. Rouse  
3 earned -- for example, I don't report 61.1, if we're  
4 back on line 1 of -- of -- of the table on page 4.  
5 Instead I compare the margin of victory. So the  
6 difference between whatever the vote total was  
7 between the candidate and the threshold they would  
8 need to have won the election. And then I plotted  
9 those for each of the different districts and the  
10 different versions of each district and compared  
11 them to the actual election, which on pages 7 and 15  
12 I denote with actual election, but on pages 4 and 5  
13 I -- I refer to them as at-large instead of actual.  
14 But those are the same things.

15 Q. So is it a simple algebraic function  
16 that you take the 61.1 percent that you projected  
17 Aaron Rouse would have received in Modified  
18 Illustrative Plan District 1 and subtracted off some  
19 amount that -- in the margin of victory?

20 MS. GREENWOOD: Objection to the extent  
21 that 61.1 isn't a percent. I believe Dr. Spencer  
22 said it's a proportion.

23 A. Yeah. So just as a clarification,  
24 because in this particular race the number of  
25 ballots adds up to 200 percent because individuals

1 cast two ballots, it's a proportion of votes, but  
2 you'll see in the 2018 at-large election that the  
3 second-highest vote total in the Modified  
4 Illustrative Plan was by Ms. -- by Oliver, which was  
5 40.6. And so the -- the threshold in order to win  
6 that election, because two candidates were -- were  
7 winning, was 40.6. Any vote total above that would  
8 have won. So the margin of victory there is 61.1  
9 minus 40.6. If you look at page 7, you'll see that  
10 that first bar is at 20.1 or something like that,  
11 20.3.

12 BY MR. BOYNTON:

13 Q. So there has been no further adjustment  
14 of the 61.1 or the 40.6, correct?

15 A. That is correct. It's just a  
16 subtraction.

17 Q. Okay. And that's the case with all of  
18 these charts pages 7 through 15, they -- they would  
19 correlate to pages 4 and 5?

20 A. Yes, with the clarification that in the  
21 races that didn't feature more than one candidate  
22 winning the margin of victory is determined by the  
23 number of votes earned minus the -- the -- the  
24 second-place runner, not the -- not the third-place  
25 runner.

1 Q. Makes sense.

2 So under the Modified Alternative Plans  
3 for -- for Ms. White in 2018 she would have still  
4 lost either way, correct, on page 8 --

5 A. Her --

6 Q. -- under any of the maps?

7 A. Her margin of victory was smaller, but  
8 because it's below the line that denotes that she  
9 still would have lost.

10 Q. Okay. And that is the case for District  
11 1 across the board for Dr. Ross-Hammond in 2016,  
12 correct?

13 A. That is correct, yes.

14 Q. And for Mr. Cabiness in 2014, he would  
15 have lost under District 1 or District 2 (audio  
16 interruption) any of the plans?

17 THE REPORTER: I'm sorry, Chris.

18 A. That --

19 THE REPORTER: What was -- what was the  
20 last part of your question?

21 BY MR. BOYNTON:

22 Q. He would have lost under -- or District  
23 1 or District 2 in any of the plans?

24 THE REPORTER: Thank you.

25 A. That is correct.

1 BY MR. BOYNTON:

2 Q. And on page 13, the second minority  
3 candidate in the 2010 at-large election,  
4 Mr. Jackson, would have lost under -- in his  
5 District 1 plan?

6 A. In the District 1 plans all versions,  
7 correct, he does not earn enough to win.

8 Q. Is shrinking the margin of defeat a  
9 sufficient ju -- justification for invalidating an  
10 at-large system and replacing it with a  
11 single-member district, in your view?

12 A. Well, in the context of Section 2 of the  
13 Voting Rights Act, and the requirements that the  
14 Supreme Court lays out in Thornburg v. Gingles,  
15 what's asked for is where there's evidence of white  
16 bloc voting that is sufficient to usually defeat  
17 minority candidates of choice a -- a remedy that's  
18 been accepted by the courts, one of several possible  
19 remedies, is to draw districts that would increase  
20 the opportunity of minority communities to  
21 participate in politics in a real and meaningful way  
22 and to elect candidates of choice.

23 So I interpret that instruction from the  
24 court and subsequent lower-court opinions to both  
25 motivate a -- a remedy that doesn't guarantee



1 victories for minority communities but it allows  
2 them to meaningfully participate.

3           So in my view, yes, if you lost by 30  
4 percent under the original -- the current at-large  
5 system, but under a districting system you would  
6 only lose by two or three percent in a really close  
7 contested race, that is relevant, and I think, if a  
8 Section 2 violation is found, a -- a -- an  
9 acceptable, in fact a -- a -- a -- a hopeful  
10 outcome.

11           Q.     Are you -- have you testified to that  
12 effect previously in other cases?

13           A.     I have not, no.

14           Q.     Are you aware of any specific cases that  
15 rely on the proposition that losing by less is a  
16 justification to set aside an at-large district  
17 system?

18           A.     I'm aware of cases that speak to a  
19 concern about the Voting Rights Act being used to  
20 guarantee victories for minority-community can --  
21 preferred candidates, and speaking to the power of  
22 allowing meaningful participation. It's independent  
23 of whether or not a candidate wins, but whether  
24 there's a chance that a particular  
25 minority-preferred candidate could win and a chance

1 for them to actually engage in politics in a way  
2 where it's not just as a token candidate that loses  
3 by 30 percent.

4 Q. Do you have -- or did you in preparing  
5 these analyses for the supplemental report -- do you  
6 have the data files for the precincts you used in  
7 each of the sets?

8 A. Yes. I believe they were disclosed, but  
9 I do have them, yes.

10 Q. I'll circle back and -- and, if -- if  
11 not, we'll follow up after the deposition.

12 Turning your attention to your  
13 deposition followup on page 16 of your report --  
14 we're still on Exhibit 10, the supplemental report.

15 A. I see that.

16 Q. Okay. You -- you do a specific response  
17 relating to the 2010 race between Louis Jones and  
18 George Furman, correct?

19 A. That is correct.

20 Q. What was your purpose in -- in doing  
21 that deposition followup?

22 A. Only that in the course of the  
23 deposition when I couldn't recall off the top of my  
24 head and I stated that I would reserve the right to  
25 confirm that, I just wanted to transparently provide

1 that confirmation as opposed to let it slide, I  
2 suppose.

3 Q. Okay. So you say that after you went  
4 back and looked that "I have confirmed that the  
5 estimated support among minority voters for Jones  
6 and Furman in 2010 is not statistically  
7 significantly different."

8 You then refer to your ecological  
9 inference calculations that show support for Jones  
10 at 56 percent plus or minus 14 percent and support  
11 for Mr. Furman at 44 percent plus or minus 16  
12 percent. Why is that not statistically significant?

13 A. The confidence -- so at -- at the very  
14 minimum the confidence intervals overlap, which is a  
15 -- a hallmark of -- of group metric statistical  
16 significance does not match.

17 THE REPORTER: I'm sorry.

18 A. So --

19 THE REPORTER: I'm -- I'm sorry. My  
20 dog. Can you -- can you repeat your answer?

21 MR. BOYNTON: Take a moment.

22 THE REPORTER: Yeah. The -- the Fed Ex  
23 guy is here. Go ahead. I'm sorry.

24 A. So you'll see Mr. Jones is 56 percent  
25 plus or minus 14 percent.

1                   So even just with that confidence  
2 interval it would be as low as 42 percent, which is  
3 lower than Furman's estimate -- point estimate.  
4 But, of course, Furman's estimate could be as high  
5 as 60 percent. So there's overlap in the confidence  
6 intervals that suggests we can't with certainty say  
7 that the minority preferences for these candidates  
8 is different.

9 BY MR. BOYNTON:

10           Q.     So every time the confidence intervals  
11 overlap in your analysis you cannot say with  
12 statistical certainty that one result retains versus  
13 the other; is that your testimony?

14           A.     I cannot say with the standard  
15 95-percent confidence that they're different, no,  
16 which is the standard that's often used, but it's  
17 not -- I'll just -- I'll leave it there.

18                   I would say when the confidence  
19 intervals overlap I do not include markers of  
20 statistical significance in my analysis, which in  
21 the original report were asterisks and check --  
22 checkmarks.

23           Q.     Okay. So have you gone back and -- and  
24 -- and determined that every -- every race -- every  
25 election that you analyzed was -- and that you found

1 statistically significant was inside the mar -- the  
2 overlapping margin of error?

3 MS. GREENWOOD: Objection.

4 A. It would be the opposite. I did go back  
5 and confirm these, but every -- every race where  
6 there wasn't confidence interval overlap then I  
7 determined statistical significance.

8 In fact, to be especially clear, I run  
9 statistical tests to make that determination. The  
10 mechanisms of those tests are essentially equivalent  
11 to looking at confidence intervals and whether or  
12 not they overlap, but I didn't just visually look at  
13 them or use arithmetic to determine whether they  
14 overlapped. I run a -- what's called a T test that  
15 looks at statistical differences between estimates  
16 to -- to make that determination.

17 BY MR. BOYNTON:

18 Q. But your testimony is that in any  
19 instance where the confidence intervals overlap that  
20 the -- that you cannot say that that outcome versus  
21 the other is -- is the result with statistical  
22 certainty, correct?

23 MS. GREENWOOD: Objection.

24 A. That -- I -- I think -- I -- I think  
25 that's correct. I cannot say with certainty that

1 they are different. I also cannot say that they're  
2 the same because I can't rule out an alternative  
3 hypothesis. It just becomes a result that you have  
4 to describe the way we're describing it now, which  
5 is the estimates are different, but they're not  
6 statistically significantly different.

7 And so that prompts a larger discussion  
8 perhaps about the relevance. In the relevance of  
9 the Furman versus Jones case the point just came up  
10 in the deposition that if the race was probative was  
11 Mr. Jones the minority candidate of choice. And I  
12 just wanted to -- the point of this was just to  
13 confirm that I wouldn't have marked him as a  
14 minority candidate of choice because I could not  
15 distinguish him from the vote preferences of a  
16 different candidate.

17 BY MR. BOYNTON:

18 Q. Understood.

19 Have you provided us with the confidence  
20 intervals for your original report? I don't know  
21 that we've seen that.

22 A. I -- the -- the T tests and the report  
23 for the T tests were disclosed in the materials that  
24 I provided after all three reports actually.

25 Q. Okay. Well, we'll go back and look at

1 it then. I won't further bear upon it now.

2 Give me one moment. I'm making sure I  
3 haven't omitted anything.

4 With respect to the Jones versus Furman  
5 race you -- you refer to the overlapping confidence  
6 intervals and EI. Is it your testimony that, for  
7 example, the homogenous precinct number of 63.1  
8 versus 36.9 also overlaps the confidence intervals?

9 MS. GREENWOOD: Objection.

10 A. Can you -- can you --

11 MS. GREENWOOD: Yeah. Go ahead.

12 A. Can you direct me to where you're  
13 looking? Sorry. Is this Exhibit 1?

14 BY MR. BOYNTON:

15 Q. Well, in your -- I'm just trying to  
16 understand the -- your -- your testimony as to the  
17 supplemental report by looking at your original  
18 report, Exhibit 1, where you do the -- the -- the  
19 three factor -- the -- the three types of analysis  
20 for each candidate that you analyze.

21 A. Uh-huh.

22 Q. So let me get -- I'll get you a page  
23 number. Just give me a second.

24 It looks like it's page 27 of your  
25 original report.

1           A.     Okay. I see it. It's page 28 for me,  
2     but that may include a title page. So, yes, I see  
3     it.

4           Q.     Okay. So you have -- for Jones versus  
5     Furman you have black and all-minority numbers under  
6     HP, ER and EI, correct?

7           A.     That is correct.

8           Q.     And in your deposition follow-up in your  
9     supplemental report you make specific reference to  
10    the EI calculations and compare the 56.6 to the 43.7  
11    and say those overlap -- the confidence intervals  
12    overlap for those two numbers; correct?

13          A.     That is correct.

14          Q.     And, therefore, that metric is not  
15    statistically reliable, correct?

16          A.     Correct. Which is why there's no star.

17          Q.     Okay. So there are two other methods  
18    that do have stars at least as to African American  
19    candidate of choice, correct?

20          A.     Correct.

21          Q.     Okay. And so even though you don't have  
22    a star by one of the three you initially identified  
23    Jones as the minority candidate of choice,  
24    correct -- of black and all minorities, correct?

25          A.     That's correct. That's what prompted



1 the exchange at the original deposition.

2 Q. Okay. So you got two out of three and  
3 you checked those boxes. So he's still the minority  
4 candidate of choice, correct?

5 MS. GREENWOOD: Objection.

6 A. So if the -- if we were looking just at  
7 black voters and not all minority voters, then given  
8 that -- I -- I would -- I would go look at the  
9 difference in the ecological inference between that  
10 55 and that 44 to see how much those overlap because  
11 part of this exercise was to -- was to look at all  
12 three metrics kind of taken together. But all  
13 that's irrelevant because the -- the relevant metric  
14 now is all-minority, not black voters only, and  
15 there -- there -- there there's more overlap and not  
16 significance. That checkmark, as I pointed out  
17 before, was -- is incorrect.

18 BY MR. BOYNTON:

19 Q. Simply because of the overlap, not  
20 because Jones did not lead in all three of your  
21 analyses?

22 A. That's correct. If we had just looked  
23 at black voting, it's possible that I would have  
24 identified Jones as a minority candidate of choice,  
25 again looking closely at the ecological inference as

1 well to add to that determination. But for the  
2 all-minority view I would not make that  
3 determination.

4 Q. What is your understanding of why the  
5 modified plans were offered?

6 A. I -- I was -- I wasn't told specifically  
7 what the motivation was, but given the requirements  
8 for Section 2 litigation and the -- the need to show  
9 a court that there is a possible remedy under  
10 Gingles 3 -- I guess all three Gingles factors,  
11 these illustrative districts are part and parcel of  
12 Section 2 litigation, so I took them as a part of  
13 the next step of analysis.

14 Q. Well, other than including Georgia  
15 Allen, one of the plaintiffs, in the modified  
16 District 1, what other changes were made to the --  
17 the -- the plans between pre-modification and  
18 modification?

19 MS. GREENWOOD: Objection.

20 A. That I don't -- I don't know.

21 BY MR. BOYNTON:

22 Q. And these plans are organized or  
23 developed to -- with a predominant factor of race  
24 involved, correct?

25 MS. GREENWOOD: Objection.

1           A.     I don't -- I don't know what  
2     Mr. Fairfax's process or motivations were. **I just**  
3     **received the maps and performed an analysis.**

4     BY MR. BOYNTON:

5           Q.     Turning to page 4 of your report...

6           A.     Is this the supplemental report?

7           Q.     Yes. Sorry. It's Exhibit 10.

8           A.     (Moved head up and down.)

9           Q.     An asterisk identifies the minority  
10    candidate, correct?

11          A.     It -- yes. It indicates that the  
12    candidate themselves was non-white.

13          Q.     Okay. Tanya Bullock is non-white,  
14    correct?

15          A.     I believe so, yes, and Georgia Allen,  
16    who were left out.

17          Q.     Those would both be errors?

18          A.     Those would both be errors, yes.

19                 MR. BOYNTON: I don't believe I have  
20    anything else fur -- further. Thank you, sir.

21                 THE DEPONENT: Thank you.

22                 MS. GREENWOOD: And -- and, as we said  
23    before, we'll review and sign.

24                 MR. BOYNTON: Understood. Thank you.

25                 (Discussion off the record)

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(Signature not waived.)

(The deposition concluded at 1:02 p.m.)



## 1 CERTIFICATE OF DEPONENT

2 STATE OF \_\_\_\_\_

3 CITY OF \_\_\_\_\_

4 Before me, this day, personally appeared DOUGLAS  
5 M. SPENCER, who, being duly sworn, states that the  
6 foregoing transcript of this deposition, taken in  
the matter, on the date and at the place set out on  
the title page hereof, constitutes a true and  
complete transcript of said deposition.

7  
8  
9 -----  
DOUGLAS M. SPENCER

10  
11  
12 SUBSCRIBED and SWORN to before me this \_\_\_\_\_  
13 day of \_\_\_\_\_, 2020, in the jurisdiction  
aforesaid.

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16 \_\_\_\_\_  
My Commission Expires

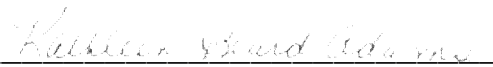
\_\_\_\_\_  
Notary Public

1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Kathleen Beard Adams, CCR, RPR, CRR, an  
3 e-Notary Public for the Commonwealth of Virginia at  
4 large, of qualification in the Circuit Court of the  
5 City of Virginia Beach, Virginia, and whose  
6 commission expires August 31, 2022, do hereby  
7 certify that the within named deponent, DOUGLAS M.  
8 SPENCER, appeared before me at Lafayette, Colorado,  
9 as hereinbefore set forth, and after being first  
10 duly sworn by me, was thereupon examined upon his  
11 oath by counsel for the respective parties; that his  
12 examination was recorded in Stenotype by me and  
13 reduced to computer printout under my direction; and  
14 that the foregoing constitutes, to the best of my  
15 ability, a true, accurate, and complete transcript  
16 of such examination.

17 I further certify that I am not related to  
18 nor otherwise associated with any counsel or party  
19 to this proceeding, nor otherwise interested in the  
20 event thereof.

21 Given under my hand and notarial seal this  
22 21st day of June, 2020.

23 

24 Notary Public

25 Certified Court Reporter No. 0313086